

House Study Bill 236

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act authorizing the appointment of an attorney to represent an
2 indigent parole violator, and providing effective and
3 retroactive applicability date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 3054HC 81
6 jm/cf/24

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1 1 STATE PUBLIC DEFENDER
1 2 Section 1. Section 13B.4, subsection 1, Code 2005, is
1 3 amended to read as follows:
1 4 1. The state public defender shall coordinate the
1 5 provision of legal representation of all indigents under
1 6 arrest or charged with a crime, seeking postconviction relief,
1 7 against whom a contempt action is pending, in proceedings
1 8 under section 811.1A or chapter 229A or 812, in juvenile
1 9 proceedings, on appeal in criminal cases, and on appeal in
1 10 proceedings to obtain postconviction relief when ordered to do
1 11 so by the district court in which the judgment or order was
1 12 issued, ~~and on a reopening of a sentence proceeding~~, and may
1 13 provide for the representation of indigents in proceedings
1 14 instituted pursuant to ~~section 908.11~~ chapter 908. The state
1 15 public defender shall not engage in the private practice of
1 16 law.
1 17 Sec. 2. Section 602.8102, subsection 133, Code 2005, is
1 18 amended by striking the subsection.
1 19 Sec. 3. Section 815.10, subsection 1, Code 2005, is
1 20 amended to read as follows:
1 21 1. The court, for cause and upon its own motion or upon
1 22 application by an indigent person or a public defender, shall
1 23 appoint the state public defender's designee pursuant to
1 24 section 13B.4 to represent an indigent person at any stage of
1 25 the criminal, postconviction, contempt, commitment under
1 26 chapter 229A, detention under section 811.1A, competency under
1 27 chapter 812, parole revocation if applicable under section
1 28 908.2A, or juvenile proceedings or on appeal of any criminal,
1 29 postconviction, contempt, commitment under chapter 229A,
1 30 detention under section 811.1A, competency under chapter 812,
1 31 parole revocation under chapter 908, or juvenile action in
1 32 which the indigent person is entitled to legal assistance at
1 33 public expense. However, in juvenile cases, the court may
1 34 directly appoint an existing nonprofit corporation established
1 35 for and engaged in the provision of legal services for
2 1 juveniles. An appointment shall not be made unless the person
2 2 is determined to be indigent under section 815.9. Only one
2 3 attorney shall be appointed in all cases, except that in class
2 4 "A" felony cases the court may appoint two attorneys.
2 5 Sec. 4. Section 815.11, Code 2005, is amended to read as
2 6 follows:
2 7 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.
2 8 Costs incurred under chapter 229A, 665, ~~or~~ 822, or 908, or
2 9 section 232.141, subsection 3, paragraph "c", or section
2 10 598.23A, 814.9, 814.10, 814.11, 815.4, 815.7, or 815.10, ~~or~~
2 11 ~~908.11~~ on behalf of an indigent shall be paid from funds
2 12 appropriated by the general assembly to the office of the
2 13 state public defender in the department of inspections and
2 14 appeals for those purposes. Costs incurred representing an
2 15 indigent defendant in a contempt action, or representing an
2 16 indigent juvenile in a juvenile court proceeding under chapter
2 17 600, are also payable from these funds. However, costs

2 18 incurred in any administrative proceeding or in any other
2 19 proceeding under chapter 598, 600, 600A, 633, or 915 or other
2 20 provisions of the Code or administrative rules are not payable
2 21 from these funds.

2 22 Sec. 5. Section 908.2, Code 2005, is amended to read as
2 23 follows:

2 24 908.2 INITIAL APPEARANCE == BAIL.

2 25 1. An officer making an arrest of an alleged parole
2 26 violator shall take the arrested person before a magistrate
2 27 without unnecessary delay for an initial appearance. ~~At that~~
~~2 28 time the alleged parole violator shall be furnished with a the~~
2 29 initial appearance the magistrate shall do all of the
2 30 following:

2 31 a. Provide written notice of the claimed violation ~~and~~
2 32 ~~shall be given.~~

2 33 b. Provide notice that a parole revocation hearing will
2 34 take place and that its purpose is to determine whether the
2 35 alleged parole violation occurred and whether the alleged
3 1 violator's parole should be revoked.

3 2 c. Advise the alleged parole violator of the right to
3 3 request an appointed attorney.

3 4 2. The magistrate may order the alleged parole violator
3 5 confined in the county jail or may order the alleged parole
3 6 violator released on bail under terms and conditions as the
3 7 magistrate may require. Admittance to bail is discretionary
3 8 with the magistrate and is not a matter of right. A person
3 9 for whom bail is set may make application for amendment of
3 10 bail to a district judge or district associate judge having
3 11 jurisdiction to amend the order. The motion shall be promptly
3 12 set for hearing and a record shall be made of the hearing.

3 13 Sec. 6. NEW SECTION. 908.2A APPOINTMENT OF AN ATTORNEY.

3 14 1. An attorney may be appointed to represent an alleged
3 15 parole violator in a parole revocation proceeding only if all
3 16 of the following criteria apply:

3 17 a. The alleged parole violator requests appointment of an
3 18 attorney.

3 19 b. The alleged parole violator is determined to be
3 20 indigent as defined in section 815.9.

3 21 c. The appointing authority determines each of the
3 22 following:

3 23 (1) The alleged parole violator lacks skill or education
3 24 and would have difficulty presenting the alleged parole
3 25 violator's case, particularly if the proceeding would require
3 26 the cross-examination of witnesses or would require the
3 27 submission or examination of complex documentary evidence.

3 28 (2) The alleged parole violator has a colorable claim the
3 29 alleged violation did not occur, or there are substantial
3 30 reasons that justify or mitigate the violation and make any
3 31 revocation inappropriate under the circumstances.

3 32 2. If all of the criteria apply in subsection 1, a
3 33 contract attorney with the state public defender may be
3 34 appointed to represent the alleged parole violator. If a
3 35 contract attorney is unavailable, an attorney who has agreed
4 1 to provide these services may be appointed. The appointed
4 2 attorney shall apply to the state public defender for payment
4 3 in the manner prescribed by the state public defender.

4 4 Sec. 7. Section 908.4, subsection 2, Code 2005, is amended
4 5 to read as follows:

4 6 2. The administrative parole judge shall make a verbatim
4 7 record of the proceedings. The alleged violator ~~shall not~~
~~4 8 have the right to appointed counsel,~~ shall be informed of the
4 9 evidence against the violator, shall be given an opportunity
4 10 to be heard, shall have the right to present witnesses and
4 11 other evidence, and shall have the right to cross-examine
4 12 adverse witnesses, except if the judge finds that a witness
4 13 would be subjected to risk or harm if the witness's identity
4 14 were disclosed. The revocation hearing may be conducted
4 15 electronically.

4 16 Sec. 8. Section 815.1, Code 2005, is repealed.

4 17 Sec. 9. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.

4 18 This Act, being deemed of immediate importance, takes effect
4 19 upon enactment, and applies retroactively to November 10,
4 20 2004.

4 21 EXPLANATION

4 22 This bill authorizes the appointment by an administrative
4 23 law judge or the court of an attorney at state expense for an
4 24 indigent parole violator.

4 25 The bill, in response to the Iowa supreme court case
4 26 Pfister v. Iowa District Court for Polk County, requires that
4 27 an alleged parole violator be informed of the right to request
4 28 an attorney for any parole revocation proceeding, and under

4 29 certain circumstances requires that an attorney be appointed
4 30 to represent the alleged parole violator during such
4 31 proceedings. The law prior to Pfister prohibited the court
4 32 appointment of an attorney on behalf of an indigent parole
4 33 violator.

4 34 Under the bill, an alleged parole violator may be appointed
4 35 an attorney if all of the following apply: the alleged
5 1 violator requests the appointment of an attorney; the alleged
5 2 violator is indigent; the alleged violator lacks the education
5 3 or skill to present the alleged violator's case or the case
5 4 requires the submission or examination of complex documentary
5 5 evidence; and the alleged violator has a colorable claim the
5 6 violation did not occur or there are substantial reasons which
5 7 justify or mitigate any parole revocation.

5 8 The bill also authorizes payment from the indigent defense
5 9 fund in Code section 815.11 to appointed attorneys
5 10 representing indigent parole violators. Current law under
5 11 Pfister authorizes payment for the representation of an
5 12 indigent parole violator from the general fund of the state.

5 13 The bill also repeals Code section 815.1 because the
5 14 substance of the section is now included in the references to
5 15 parole revocations in Code sections 815.10 and 815.11.

5 16 The bill takes effect upon enactment and applies
5 17 retroactively to November 10, 2004, the date the supreme court
5 18 decided Pfister v. Iowa District Court for Polk County.

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